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U.S. SUP. CT., U.S.
FILED
JUN 30 1942
CHARLES ELMORE WADLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1941

No. 191

C. C. HARAWAY _____ *Petitioner,*

v.

STATE OF ARKANSAS _____ *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS AND BRIEF IN
THE SUPPORT THEREOF

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*To the Honorable Harlan Fiske Stone, Chief Justice of the
United States and the Associate Justices of the
Supreme Court of the United States:*

Your petitioner, C. C. Haraway, respectfully presents to this Court his petition for a writ of certiorari addressed to the Supreme Court of Arkansas, the highest Court of said State, commanding said Court and the clerk thereof to certify to this Court the records and proceedings of the case wherein your petitioner was appellant, State of Arkansas was appellee, for review of a judgment of said Court, which judgment affirmed the judgment of Howard

Circuit Court of Howard County, Arkansas, and for a determination of said cause by this Court.

Your petitioner presents to this Court, and files herewith as an exhibit hereto, a duly certified transcript of the record in this case, as the same appears in the Supreme Court of Arkansas.

A.

SUMMARY STATEMENT OF MATTER INVOLVED

1. PRESENT STATUS OF CASE

Petitioner C. C. Haraway is now under sentence of two years in the Arkansas State Penitentiary. He was sentenced on the 5th day of September, 1941, at Nashville, in Howard Circuit Court of Howard County, Arkansas. Your petitioner is now at liberty on a \$1,500 personal bond. The conviction was affirmed in the Arkansas Supreme Court, the Court of the last resort in Arkansas, on 16th day of February, 1942, and petition for rehearing was denied March 30, 1942. Your petitioner filed a motion for a stay of issuance of mandate on April 2, 1942, which was granted by the Hon. E. L. McHaney, Associate Justice of the Supreme Court of Arkansas, for ninety days, from April 2, 1942, in order to allow your petitioner time in which to file this his petition for review on writ of certiorari to this Court.

2. SALIENT FACTS

Petitioner was arrested in Tollett, Howard County, Arkansas, in February, 1941, and charged with the crime of grand larceny for having appropriated to his personal use commodities more specifically (food stuff) which was

appropriated to the Tollett School District for the purpose of furnishing hot lunches to the pupils of Howard County Training School of which your petitioner was then principal. He was taken to Nashville, Arkansas, and placed in jail. While thus confined he was questioned by Hon. Body Tackett, prosecuting attorney of Howard County, and Hon. George Edwin Steel, deputy prosecuting attorney of the aforesaid county, and made a purported confession (R. 80).

Your petitioner was indicted by the regular grand jury of Howard County under which indictment your petitioner was brought to trial on the 3rd day of March, 1941. Your petitioner waived arraignment and pleaded not guilty following a motion to quash the aforesaid indictment on the grounds of the exclusion of the negro race from jury service in Howard County for a number of years in contravention of statutes and Constitution of the State of Arkansas and 14th Amendment of the Constitution of the United States. The motion was overruled. Your petitioner was brought to trial on said indictment, and was found guilty of grand larceny and sentenced to five years in the state penitentiary. Motion for new trial was filed and denied and an appeal was taken to the Supreme Court of the State of Arkansas. The Supreme Court of Arkansas reversed and remanded the case to the Howard Circuit Court with direction that it hear evidence in support of petitioners contention and if found to be true the indictment should be quashed. Vol. 76, Law Reporter, No. 3, page 95. The Howard Circuit Court as per the mandate of the Arkansas Supreme Court heard evidence on your petitioner's motion to quash on August 27, 1941, and ordered the indictment quashed (R. 4). The Howard Circuit Court ordered that a special grand jury be summoned to appear on August 28, 1941 (R. 4).

The special grand jury was summoned by Sheriff Jones Floyd of Howard County without a formal order (*fiery facias*) (R. 32). Eighteen negro electors were summoned and impanelled as a special grand jury (R. 52). An indictment or true bill was returned by this special grand jury, indicting your petitioner August 28, 1941, for grand larceny and a bench warrant was issued on the same (R. 8).

Your petitioner filed a motion to quash the aforesaid indictment on the grounds that this was an illegally constituted grand jury in that there was discrimination in the manner of selection and that it was composed solely of negroes depriving petitioner of the equal protection of the Constitution and laws of the State of Arkansas and the 14th Amendment of the Constitution and laws of the United States, and that the proceedings were without due process of law (R. 11). Your petitioner introduced evidence in support of his motion to quash, the same was overruled by the Howard County Circuit Court, September 1, 1941. Petitioner was tried on the aforesaid indictment and convicted of the crime of grand larceny and sentenced to two years in the Arkansas State Prison, September 5, 1941 (R. 19). Petitioner filed a motion for a new trial which was heard by the Howard County Circuit Court and denied September 5, 1941. Petitioner prayed and was granted an appeal to the Supreme Court of the State of Arkansas (R. 20).

The Supreme Court of the State of Arkansas reviewed the case upon the second appeal and passed upon the question raised by your petitioner in the Howard County Circuit Court of the denial of due process and equal protection guaranteed by the 14th Amendment to the Constitution and

laws of the United States. The judgment of the Howard County Circuit Court was affirmed (R. 81). A petition for rehearing was filed and denied on March 30, 1942, by the Arkansas Supreme Court (R. 84).

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The Supreme Court of Arkansas has decided a federal question of substance in a manner that is not in accord with the applicable decisions of this Court. In that it has held that discrimination in the selection of a grand jury and the selection of an all-negro grand jury did not deprive the petitioner of his constitutional rights and was not in violation of the *Due Process and Equal Protection Clauses* of the 14th Amendment to the Constitution of the United States.

Cases:

Carter v. Texas, 177 U. S. 442.

Johnson v. Zerbst, 304 U. S. 458, 467.

Neal v. Delaware, 103 U. S. 370.

Pierre v. State of La., 59 S. Ct. 536.

Virginia v. Rives, 100 U. S. 313.

Strauder v. West Virginia, 100 U. S. 303.

The Supreme Court of Arkansas has further decided a federal question of substance in a way that is not in accord with the applicable decisions of this Court in that it fails to hold that the Circuit Court of Howard County of Arkansas was not in error in its refusal to quash the indict-

ment of your petitioner by an all-negro grand jury when it was shown that the unfair method of selection had been used and that an all-negro grand jury had been selected as a subterfuge to evade the rights guaranteed your petitioner by the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

Cases:

Carter v. Texas, 177 U. S. 442.

Lane v. Wilson, 307 U. S. 268.

Neal v. Delaware, 103 U. S. 370.

Pierre v. State of La., 59 S. Ct. 563, 306 U. S. 354.

Edgar Smith v. State of Texas, 85 Law Ed. 84.

Strauder v. West Virginia, 100 U. S. 303.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Honorable Court directed to the Supreme Court of the State of Arkansas setting at Little Rock, Arkansas, commanding that Court to certify and send to this Court on a day to be designated a full and complete transcript of the record and all proceedings of the said Supreme Court of the State of Arkansas had in said cause, to the end that said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said judgment of the Supreme Court of the State of Arkansas be reversed by this Honorable Court, and for such further relief as may seem proper.

C. C. HARAWAY.

By: SCIPIO A. JONES,

JNO. A. HIBBLER,

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